Conclusion—A Different Perspective: Do Not Focus Only On SMEs, Make The Knowledge Economy Work

By Patrick Terroir

All policies in favor of SMEs have actually limited effectiveness and have hardly produced any significant change in the behavior of this category of enterprises. So, while it may be necessary to strengthen and improve them, we may consider whether it is not necessary to transform the "patent economy" itself.

As we have seen, the SMEs consider that the current system is too costly for a limited effectiveness and is neither accessible nor useful to them. At a time when innovation is at the heart of our economies, where SMEs play an increasing role in this regard and intangible assets represent the core of business value, this defiance toward patenting challenges the entire IP system.

Indeed, how can we imagine seriously that the SMEs will invest time and money—which are extremely rare for them—to obtain (after three years at best) a patent title that will not be considered as an asset in their balance sheet, which cannot be used to obtain a loan (except recently in a few countries in Asia) and that cannot be simply and securely sold or licensed.

In such a context it seems highly urgent, to safeguard the IP system and truly change the situation of the SMEs, to open up an international reflection, as it was done in the past for the *TRIPS* or the *PCT agreements*. This reflection should focus on the status and the role of the patents as regards the main innovative actors (SMEs and PROs) and take account of the new technologies and the transformation of the global value chain.

In particular, two main objectives should be attained to make the patent system in line with the needs of the SMEs:

- To recognize the patent as a true asset and a production input; and
- To create the full economic mechanisms necessary to the knowledge economy.

However, the means of achieving these objectives are diverse and they often involve some profound transformations which call for in-depth reflection. To open them, this conclusion aims to present the most important ones.

Make the Patent a Robust International Title

In order to adapt the patent system to the reality of innovation, it is in particular necessary that SMEs no longer run up against long and complex procedures, which are too different from one country to another and give no assurance as to the validity of the issued patents.

The objectives to be attained are therefore to make the patent procedures more accessible (less expensive, less complex on the international level) and above all to make the patent a robust title (*e.g.* non-contestable after a certain period of time) at the level of the world economy. This, of course, presupposes that patent offices meet equivalent quality standards and that communication between them improves—which should not be a technical problem in these times of digitalization, big data and AI (artificial intelligence).

Make the Patent a Recognized Industrial and Business Asset

SMEs will only be interested in patents if they become a recognized asset in their balance sheet. It should not be about "accounting contortions" but putting patents in the same position as other tangible assets and to recognize them as the result of the R&D investment made.

The patents have several characteristics that should contribute to account them as fully-fledged assets: they are issued through procedures carried out by independent entities, they are standardized (incompletely) at the international level, they are accessible in official databases… The remaining (and essential) question is the one about the value of this intangible asset, which could not be solved without the setting up of a true "economy" of knowledge.

Rebalance the Function of Patents and Create a True Economy of Knowledge and Intangible Assets

The patent can no longer be considered only as a mean "to prevent a third party"[1] and to sue infringers, even if the defense of property is a necessary condi-

1. *TRIPS agreement*, article 28.

tion for the working of the IPR system. The process of innovation is changing and it rests more and more on cooperation, exchanges and associations between inventions coming from everywhere. The patents are the most suitable vehicle to become the needed technology transfer instrument and the valuation and transaction asset.

The aim should be to complete the setting up of the knowledge economy by giving to every enterprises the possibility to produce, finance, acquire, exchange, sell and license intangible assets on the basis of instruments and values recognized and accepted. As there is no value without a "market" process, the objective should be to create the conditions for an easy access, a transparent (predictable) and secure frame for patent exchanges - as such mechanisms exist in all other areas of the economy. The "patent market" fulfills part of these functions already between large companies; the goal is to extend it to the SMEs and to get a "regulated market" for intangibles—as it exists (under different forms) in the other domains of the economy.

The conditions and the ways for the implementation of such economic market mechanisms are not the topic of this issue but they can make the subject of a later one.

Make the Patent a Financing Tool

The lack of recognition of the value of patents, in the absence of an organized IP market, means that banks do not accept patents as collateral—which handicaps precisely the SMEs as they rely mostly on their intangible assets. As noted in a recent report,[2] "Global licensing activity leaves no doubt that IP is in fact an immensely valuable, highly tradable and very portable asset class. Current practice simply reflects the fact that the buyers of IP are immature."

When banks will consider that patents are acceptable as collateral, we may think that it will no longer be necessary to put in place heavy programs to convince SMEs of the utility of patents. But it is also likely that, without a strong support of public money—as is the case in Asia—it will not be possible to consider the patent as collateral until the previous objective (create a true patent economy) has not been achieved. ■

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These ending reflections are for the opening of the debate, and they could be the topic of future issues of *les Nouvelles*.

Available at Social Science Research Network (SSRN):
https://ssrn.com/abstract=3009410

2. "Banking on IP? The Role of Intellectual Property and Intangible Assets in Facilitating Business Finance," *UK IPO*, (2013).